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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

*[Clarification of Phrase Referring to Safe Bonds  
40961]*

FILE: B-167006 *June*

DATE: July 19, 1974

MATTER OF: Definition of "other safe bonds" under section 4 of the First Morrill Act, 7 U.S.C. 304.

- DIGEST:
1. For purposes of investing First Morrill Act land-grant funds, bonds rated "A" or better by one of established and leading bond rating services may be considered by District of Columbia as constituting "other safe bonds" within meaning of that phrase as used in such act. 50 Comp. Gen. 712 (1971) modified.
  2. For purposes of investing First Morrill Act land-grant funds, "prudent man rule" is too broad and subjective to be used as test for what constitutes "other safe bonds" within the meaning of that phrase as used in such act, since men may differ as to what is reasonable and prudent.

This decision to the Mayor-Commissioner of the District of Columbia is pursuant to the request of May 10, 1974, from the Special Assistant to the Mayor-Commissioner for our views as to what constitutes "other safe bonds" as that phrase is used in section 4 of the First Morrill Act, 7 U.S.C. 304.

In our decision to the Mayor of the District of Columbia in 50 Comp. Gen. 712 (1971), we discussed several legal problems relating to the investment of the land-grant endowment to Federal City College, authorized pursuant to the provisions of Public Law 90-354, approved June 20, 1968, 82 Stat. 241. We noted that Section 4 of the First Morrill Act requires that the monies be invested in, among other things, "bonds of the United States or of the States or some other safe bonds." (Emphasis supplied.)

With respect to whether "other safe bonds" could be industrial bonds, in our decisions we stated in pertinent part that:

"\* \* \* It appears from the letter of September 2, 1970, from the Associate Commissioner for Higher Education, quoted in part above, that HEW considers bonds approved

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for investments by fiduciaries by Rule 23 of the Rules of the United States District Court for the District of Columbia to be 'other safe bonds.' We agree with HEW's determination that bonds approved for investments by fiduciaries may be considered 'other safe bonds.' Therefore, it is our view that the District may invest its land-grant funds in industrial bonds which are approved for investment by fiduciaries under Rule 23 of the Rules cited above." Id. p. 716.

Since we issued that decision the courts of the District of Columbia have been reorganized and they no longer maintain a list of approved securities. Rule 23 of the local United States District Court which governed investments in the District by fiduciaries has been revised and is now Rule 306 of the District of Columbia Superior Court. The new rule provides that fiduciaries are to be governed by the so-called "prudent man rule" which, essentially, requires trustees to exercise their judgment in a manner equivalent to that of a reasonable and prudent man engaged in his own affairs taking into account all relevant circumstances.

Your Special Assistant points out that under Rule 306 there is no longer a precise standard and he describes several possible interpretations as follows:

- "1. that 'other safe bonds' include bonds deemed to meet the prudence test of Rule 306.
- "2. that bonds rated A or better by one of the leading rating services such as Moody's or Standards and Poors be deemed to meet the test.
- "3. that some other relevant parameter or parameters be required in addition to the one set forth in number two above.

In effect our views are requested on these alternatives.

The First Morrill Act mentions "other safe bonds" in context with Federal and State bond obligations, or where the State has no bonds, with securities agreed to by the State legislature. The legislative history of the act indicates that the monies derived by the States (and the District) are to be invested conservatively with prime importance on the maintenance of the principal amount. If the principal is diminished it would have to be restored by the District. 50 Comp. Gen. 712, 716 (1971). The Department of Health,

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Education, and Welfare (HEW)--which administers the First Morrill Act and which receives and reviews the annual reports required by that act--felt in 1970 that these funds should be invested in the specific bonds listed by the court under former Rule 23 and we understand that the bonds on that list were selected using very conservative standards.

We feel the so-called "prudent man rule" is both too broad and too subjective to comply with the strict standards which have historically been established for investment of these funds. Men may well differ over what is reasonable and prudent. We understand that in the financial world bonds rated A or better by one of the leading rating services would generally be considered safe bonds. Accordingly, we would not object to defining "other safe bonds" as those rated A or better by one of the leading rating services, subject to any further restrictions which HEW--with which we believe the District should consult--may impose.

R.F.KELLER

Deputy]

Comptroller General  
of the United States